

TIMOTHY J. HOGAN
ATTORNEY AT LAW
1050 Bishop Street, No. 433
Honolulu, Hawai'i 96813
Telephone: (808) 382-3698
Facsimile: (808) 356-1682
E-mail: tjh@timhogan.com

Counsel for Plaintiff Wayne Berry

KIRKLAND & ELLIS LLP
Richard L. Wynne (RW 5630)
Michael E. Baumann (S.B.N. 145830)
Erin N. Brady (S.B.N. 215038)
777 South Figueroa Street
Los Angeles, California 90017
Telephone: (213) 680-8400
Facsimile: (213) 680-8500
E-mail: ebrady@kirkland.com

Counsel for Defendants Deutsche Bank
Trust Company and JP Morgan Chase Bank

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

WAYNE BERRY,

Plaintiff,

vs.

DEUTSCHE BANK TRUST COMPANY
AMERICAS (F.A. BANKERS TRUST
COMPANY) AND JP MORGAN CHASE
BANK IN THEIR SEPARATE CAPACITIES
AND AS AGENTS FOR THE PRE AND
POST-PETITION LENDERS OF FLEMING
COMPANIES, INC.; GENERAL ELECTRIC
CAPITAL CORPORATION; C&S Wholesale
Grocers, Inc., DOES 1 TO 200.

Defendants.

) CASE NO.: 1:07-CV-7634 WHP

) Hon. William H. Pauley, III

) **JOINT STIPULATION AND ~~PROPOSED~~**
) **ORDER TOLLING DEFENDANTS**
) **DEUTSCHE BANK TRUST COMPANY**
) **AMERICAS' AND JP MORGAN CHASE**
) **BANK'S TIME TO ANSWER OR**
) **OTHERWISE RESPOND TO THE**
) **AMENDED COMPLAINT**

As previously agreed to by the parties pursuant to an August 30, 2007 stipulation, the parties hereby stipulate through their respective attorneys of record that Defendants Deutsche Bank Trust Company Americas' and JP Morgan Chase Bank's time to answer or otherwise respond to Plaintiff Wayne Berry's First Amended Complaint is tolled from the date that Plaintiff filed the First Amended Complaint in the District of Hawaii, August 15, 2007, until this Court holds its initial status conference or case management conference in this matter (for which Plaintiff's primary counsel, who resides in Hawai'i, will submit a separate letter requesting to appear telephonically). Accordingly, Plaintiff will not seek a default judgment against the aforementioned Defendants on account of their failure to answer or otherwise respond before that time. The parties agree that this document may be submitted in counterparts.

IT IS SO STIPULATED.

DATED: November 28, 2007

TIMOTHY J. HOGAN

By: 

Timothy J. Hogan (HI Bar No. 5312-0)

Counsel for Plaintiff

DATED: November 28, 2007

KIRKLAND & ELLIS LLP

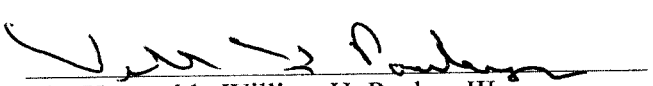
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pending*

Erin N. Brady (Cal. Bar No. 215078)

Counsel for Defendants Deutsche Bank Trust
Company Americas and JP Morgan Chase
Bank

IT IS SO ORDERED.

DATED: December 3, 2007


The Honorable William H. Pauley, III
United States District Court Judge